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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/728,495
Filing Date: December 05, 2003
Appellant(s): BERKEMA ET AL.

Jack H. McKinney, Reg. No. 45,685
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/16/09 appealing from the Office action mailed 6/6/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

20030065918	Wiley	9-2000
20030105963	Slick	2001
6748195	Phillips	9-2000

(9) Grounds of Rejection

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim(s) 48 and 49 is/are rejected under 35 USC § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim(s) recites/recite the following means (or step) plus function limitation:

Claim 48:

- a) a means for generating the PIN in response to the local PIN request and without communicating with the claimant device;
- b) a means for directing a print engine for the printing device to print the PIN
- c) a means for generating a link key using the PIN data, the link key used for device pairing between the claimant device and the printing device.

Claim 49:

- a) wherein the means for directing is a means for directing the print engine to print a test page that includes the PIN.

This limitation invokes 35 USC § 112, ¶ 6 because it meets the 3-prong analysis set forth in MPEP 2181 as it recites the phrase “means for” or “step for” (or appellant identifies the limitation as a means (or step) plus function limitation in the appeal brief) and the phrase is modified by functional language and it is not modified by sufficient structure, material, or acts for performing the recited function. Also see *Altiris Inc. v.*

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Semantec Corp., 318 F.3d 1363, 1375 (Fed. Cir. 2003). 35 USC § 112, ¶ 6, requires such claim to be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. “If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section § 112.” *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ 1845, 1850 (Fed. Cir. 1994)(in banc.). For a computer-implemented means-plus-function claim limitation that invokes 35 USC § 112, ¶ 6, the corresponding structure is required to be more than simply a general purpose computer. *Aristocrat Technologies, Inc. v. International Game Technology*, 521 F.3d 1328, 1333, 86 USPQ2d 1235, 1239-40 (Fed. Cir. 2008). The corresponding structure for a computer-implemented function must include the algorithm as well as the general purpose computer. *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 51 USPQ2d 1385 (Fed. Cir. 1999). The written description must at least disclose the algorithm that transforms the general purpose microprocessor to a special purpose computer programmed to perform the claimed function. *Aristocrat*, 521 F.3d at 1338, 86 USPQ2d at 1242.

In the instant application, the following portions of the specification and drawings may appear to describe the corresponding structure for performing the claimed function:

Claim 48:

- a) A PIN is generated in response to the local PIN request and without communicating with the claimant device. See, e.g., Specification, paragraphs [0049], [0051], and [0055], page 11, lines 17-25, page 11, line 31 through page 12, line 2, page 12, lines 27-32, and Fig. 8, step 138.
- b) The print engine is directed to print the PIN. See, e.g., Specification, paragraphs [0049], [0051], and [0055], page 11, lines 17-25, page 11, line 31 through page 12, line 2, page 12, lines 27-32, and Fig. 8, step 138.
- c) A link key is generated using the PIN data. See, e.g., Specification, paragraphs [0052], page 12, lines 3-8 and Fig. 8, step 146. The link key is used for device pairing between the claimant device and the printing device. See, e.g., Specification, paragraphs [0016], page 12, lines 9-17.

Claim 49:

- a) The print engine is directed to print the PIN. See, e.g., Specification, paragraphs [0049], [0051], and [0055], page 11, lines 17-25, page 11, line 31 through page 12, line 2, page 12, lines 27-32, and Fig. 8, step 138

However, the specification and drawings do not disclose sufficient corresponding structure, material or acts for performing the claimed function.

Claim 48:

- a) PIN module 76 represents generally any program capable of generating a PIN.
- b) Print control logic 56 represents programs capable of processing a print request received from a claimant device 42 and directing print engine 52 to print a desired image according to the processed request. Other control logic 58 represents programs capable of directing other components 54. Security logic 60,

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- c) A link key is generated using the PIN data. See, e.g., Specification, paragraphs [0052], page 12, lines 3-8 and Fig. 8, step 146.

Key module 78 represents a program capable of generating a link key using PIN data and maintaining data relating to a pairing established with verifying device 40. When generating a link key, key module 78 may also use other data such as a device address for claimant device 42 (Fig. 2)

The explanation appears to equate the various means elements with programs capable of performing the recited functions.

However, the specification does not describe how “PIN generating”, “directing print engine”; and “generating a link key” are accomplished. Specifically, the specification does not provide the algorithm for the claimed means for PIN generating, means for directing; and means for generating a link key and as such appellants have failed to adequately describe sufficient structure for performing the functions claimed.

Claim 49:

- a) Print control logic 56 represents programs capable of processing a print request received from a claimant device 42 and directing print engine 52 to print a desired image according to the processed request. Other control logic 58 represents programs capable of directing other components 54.

The explanation appears to equate the various means elements with programs capable of performing the recited functions.

However, the specification does not describe how “identifying” or directing is determined. Specifically, the specification does not provide the algorithm for the claimed means for identifying and the means for directing and as such appellants have failed to adequately describe sufficient structure for performing the functions claimed.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 18, 21, 23-26, 28-30, 31-32, and 40-47 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 18, 21, 23-26, 28-30 because paragraph 64, page 15 of the specification includes transitory embodiments.

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Claims 31-32 and 40-47 because they are system claims, all elements recited as modules which would be all software.

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

2. Claim 1 recites generating a PIN without communicating with the claimant device. Applicant does not disclose said limitation. Pending independent claims with the same limitation are also similarly rejected. Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 cites generating a PIN without communicating with the claimant device. It is unclear how this limitation can occur based on what is disclosed in applicant's specification. Furthermore, examiner interprets based on applicant's disclosure that communication is necessary. For purposes of examination, examiner interprets the claim language to be in line with applicant's disclosure, which necessitates communication between the claimant device and the PIN module. Appropriate correction is required. Independent claims with said limitation are also similarly rejected.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 31, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willey, US PGP No. 20030065918.

As per claim 1, 31, 48, Willey teaches:

A method for publishing a PIN for use in establishing a pairing between a claimant device and with a printing device, comprising:

the printing device detecting a local PIN request made by activation of a user interface control element provided by the printing device;

[see paragraph 38]

the printing device generating the PIN in response to [[a]] the local PIN request and without communicating with the claimant device; and the printing device printing the PIN;

[see paragraph 41]

receiving a connection request from the claimant device, the connection request including PIN data assembled from the PIN; and

[see paragraph 48]

generating a link key using the PIN data, the link key used for device pairing between the claimant device and the printing device.

[see paragraph 48]

3. Claims 2, 10-12, 40-42, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Willey as applied to claim 1 or 5 above, and further in view of Slick et al., US PGP No. 20030105963.

As per claim 2, 48:

The method of claim 1, identifying a local request to print a test page as the local PIN request and wherein printing the PIN comprises printing a test page that includes the PIN.

The Willey reference has been discussed above. Willey does not explicitly disclose identifying a local request to print a test page as the local PIN request wherein printing the PIN comprises printing a test page that includes the PIN.

The Slick reference teaches the above limitation not disclosed by Willey (see Slick, paragraph 0019). It would have been obvious to one of ordinary skill in the art to combine the above teachings of Willey with that which is taught by Slick so that a user "can view the predetermined [PIN] from the test page and then enter the [PIN] into the computing device".

As per claim 10, 40, Willey teaches:

The method of claim 1, further comprising determining the validity of the PIN data prior to generating the link key.

[0048]

As per claim 11, 41, Willey teaches:

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The method of claim 10, wherein determining includes determining if the PIN data corresponds to the PIN, determining if the generated PIN has expired, and rejecting the connection request if the PIN data does not correspond to the PIN or if the PIN has expired.

[0043-0047]

As per claim 12, 42:

Claim 12 reads as follows:

The method of claim 5 further comprising rejecting the connection request if the connection request is for a function not associated with the PIN data.

The Willey reference does not explicitly teach to reject a connection request if the request is for a function not associated with the PIN data. The PIN data identifies the device seeking connection. It would be obvious to reject the connection request from a device such as a headset seeking to communicate with a printer because a headset would have no need to connect with a printer.

5. Claims 13, 23, 26, 30, 31, 43, are rejected 35 U.S.C. 103(a) as being unpatentable over Willey, further in view of Phillips, US Patent No. 6748195.

As per claim 13, 23, 26, 30, 31, 43:

Willey teaches:

A method for establishing a pairing between a claimant device and a verifying device, comprising:

detecting a local PIN request made by activation of a user interface control element provided by the verifying device;

[see paragraph 38]

generating a PIN in response to the local PIN request and without communicating with the claimant device;

[see paragraph 41]

instructing the verifying device to print the PIN;

[see paragraph 42]

receiving from the claimant device a connection request, the connection request including PIN data;

[see paragraph 48]

determining whether a link key exists for the verifying device;

[see paragraph 48]

if a link key exists:

~~rejecting the connection request if the verifying device is not multi-claimant enabled;~~

~~rejecting the connection request if the verifying device is multi-claimant enabled with restricted access and the claimant device is not approved;~~

otherwise, upon a determination that the PIN data is valid, generating a link key from the PIN data to establish a pairing between the claimant device and the verifying device.

[see paragraph 48]

Willey is mute in teaching rejecting the connection request of the verifying device is not multi-claimant enabled. For this limitation, examiner relies upon the Phillips reference. Col. 7, lines 3-17, Phillips teaches disabling a device when it is "out of the office". It would be obvious to one of ordinary skill in the art to modify the Willey invention to include that which is taught by Phillips so that devices can be disabled for security reasons and for conservation of resources, etc. (col. 7, lines 13-15)..

As per claim 15, 28, 45:

The method of claim 14, wherein the PIN and the PIN data are of the same format and wherein determining the validity of the PIN data includes determining if the PIN data matches the generated PIN.

Phillips does not explicitly disclose verification of PIN data. Willey teaches this limitation, (see Willey, paragraph 0050). It would have been obvious to combine this teaching of Willey with the Phillips

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reference in order to validate the PIN. Validating the PINs ensures both devices are verified to communicate with each other.

As per claim 16, 29, 46:

The method of claim 14, wherein determining the validity of the PIN data comprises: acquiring a unique identifier for the claimant device; constructing verifying PIN data using the unique identifier and the generated PIN; determining if the PIN data matches the verifying PIN data.

Phillips does not explicitly disclose verification of PIN data. Willey teaches this limitation, (see Willey, paragraph 0050). It would have been obvious to combine this teaching of Willey with the Phillips reference in order to validate the PIN. Validating the PINs ensures both devices are verified to communicate with each other.

As per claim 17, 18, 30, 47:

A method for establishing a pairing between a claimant device and a printing device, comprising: generating a PIN in response to a local request to print a test page made to the printing device;

detecting a local request to print a test page made by activation of a user interface control element provided by the printing device.

[see rejection of claims 1 and 2]

instructing the printing device to print a test page that includes the PIN;

[see rejection of claim 2]

receiving from the claimant device a connection request, the connection request including PIN data;

[Phillips, col. 5, lines 48-59]

determining whether a valid link key exists exist for the printing device;

[Phillips, col. 5, lines 59-65]

if a valid link key exists:

rejecting the connection request if the printing device is not multi-claimant enabled;

[Phillips, col. 7, lines 3-17]

rejecting the connection request if the printing device is multi-claimant enabled with restricted access and the claimant device is not approved;

[Phillips, col. 7, lines 3-17]

otherwise, upon a determination that the PIN data is valid, generating a link key from the PIN data to establish a pairing between the claimant device and the printing device.

[Phillips, col. 6, lines 1-10]

As per claim 21, 32:

The method of claim 18, identifying a local request to print a test page as the local PIN request and wherein printing the PIN comprises printing a test page that includes the PIN.

The Willey reference has been discussed above. Willey does not explicitly disclose identifying a local request to print a test page as the local PIN request wherein printing the PIN comprises printing a test page that includes the PIN.

The Slick reference teaches the above limitation not disclosed by Willey (see Slick, paragraph 0019). It would have been obvious to one of ordinary skill in the art to combine the above teachings of Willey with that which is taught by Slick so that a user “can view the predetermined [PIN] from the test page and then enter the [PIN] into the computing device”.

As per claim 23, Willey teaches:

The medium of claim 18, having further instructions for determining the validity of the PIN data prior to generating the link key.

[0048] It would have been obvious to combine this teaching of Willey with the Phillips reference in order to validate the PIN. Validating the PINs ensures both devices are verified to communicate with each other.

As per claim 24, Willey teaches:

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The medium of claim 23, wherein the instructions for determining include instructions for determining if the PIN data corresponds to the PIN, determining if the generated PIN has expired, and rejecting the connection request if the PIN data does not correspond to the PIN or if the PIN has expired.

[0043-0047] It would have been obvious to combine this teaching of Willey with the Phillips reference in order to validate the PIN. Validating the PINs ensures both devices are verified to communicate with each other.

As per claim 25:

The medium of claim 18, having further instructions for rejecting the connection request if the connection request is for a function not associated with the PIN data.

The Willey reference does not explicitly teach to reject a connection request if the request is for a function not associated with the PIN data. The PIN data identifies the device seeking connection. It would be obvious to reject the connection request from a device such as a headset seeking to communicate with a printer because a headset would have no need to connect with a printer.

(10) Response to Argument

Grounds For Rejection A - Claims 1, 2, 10-18, 21, 23-32, 40-49 stand rejected under 35 USC §112 first and second paragraphs.

Whether claim 1 and other independent claims recite claim language ("generating the PIN in response to the local PIN request and without communicating with the claimant device") that is indefinite and further contains limitations which are not described in the specification in such a way as to enable one skilled in the art to which it pertains to make and/or use the invention.

Examiner disagrees with appellant's arguments that the specification provides more than adequate support for the above limitation. Paragraph 31 cites expiration data which is used to specify circumstances under which a generated PIN is no longer valid, for example, a PIN may only be valid during a set time window. It remains unclear how information regarding expiration data or the set time

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window of the PIN belonging to a certain claimant device is retrieved without some kind of communication with the claimant device. Paragraph 31 further cites access data that is used to specify the functions provided by the verifying device that are made available to a claimant device supplying corresponding PIN data. It further appears from this that the claimant device is supplying PIN data. Based on the above arguments, examiner contends that communication with the claimant device is necessary and that appellant's claims citing "without communication with the claimant device" are indefinite and lack support in the specification. The claims remain interpreted as requiring communication with the claimant device as this is in line with that which is cited in appellant's specification.

Based on the above, both 112 first and second paragraph rejections are maintained. Appellant fails to provide support from the specification for the current claim language and the current claim language is also deemed indefinite.

Grounds For Rejection B - Claims 1, 31, 48, and 49 stand rejected under 35 U.S.C. §103 as being unpatentable over US Pub 2003/0065918 to Willey.

Appellants remaining arguments pertaining to the art rejections of the final office action are geared towards examiner's interpretation of the claim language as not including the limitation of generating a PIN without communicating with the claimant device. Appellant argues that examiner's interpretation is flawed based on the arguments presented in response to the 112 rejections. As explained above, examiner disagrees with appellant's arguments and maintains the interpretation set forth in the final office action. Therefore the prior art rejections of the previous action are also maintained.

In response to claim 1, appellant argues that Willey fails to teach or suggest a method that includes a printing device detecting a local PIN request made by activation of a user interface control element provided by the printing device and the printing device generating the PIN in response to the local PIN request and without communicating with the claimant device. Appellant arguing that the printing device generates the PIN without communicating the with claimant device. This argument has appropriately been addressed above.

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In response to claim 31, appellant arguments are similar to that of claim 1 and thus have also been similarly addressed above.

In response to claim 48, appellant arguments are similar to that of claim 1 and thus have also been similarly addressed above.

Grounds For Rejection C - Claims 2, 10-12, 40-42, 48 and 49 stand rejected under 35 U.S.C. §103 as being unpatentable over Willey in view of US Pub 2003/0105963 to Slick.

In response to claims 2 and 10-12, appellant argues that since said claims depend on claim 1, they are patentable. Appellant arguments to claim 1 have been addressed above.

In response to claims 40-42, appellant argues that since said claims depend on claim 31, they are patentable. Appellant arguments to claim 31 have been addressed above.

In response to claim 48, appellant arguments are similar to that of claim 1 and thus have also been similarly addressed above.

Grounds For Rejection D - Claims 13, 15-18, 21, 23, 25, 26, 28-30, 31, 32, and 45-47 stand rejected under 35 U.S.C. §103 as being unpatentable over USPN 6,748,195 issued to Phillips.

In response to claim 13, appellant's arguments are similar to that of claim 1 (generating a PIN without communicating with the claimant device). Appellant's arguments have been similarly addressed above. The Phillips reference is used to reject the claim language with the interpretation that communication must occur between the printing and claimant devices. This is in the same manner as Willey is used to reject claim 1.

In response to claim 17, appellant's arguments are similar to that of claim 1 and 13. These arguments have been similarly addressed above.

In response to claim 18, appellant's arguments are similar to that of claim 1 and 13. These arguments have been similarly addressed above.

In response to claims 26 and 43, appellant's arguments are similar to that of claim 1 and 13. These arguments have been similarly addressed above.

In response to claims 30-32 and 47, appellant's arguments are similar to that of claim 17. These arguments have been similarly addressed above.

As per the status of claim 49.

Appellant states that claim 49 has failed to be addressed by examiner and thus stands neither rejected or allowed. It appears that a typo occurred in the final office action containing the rejection of claim 49. The rejection of claim 49 was incorrectly labeled as claim 48 on page 4 of the office action.

Claim 49 was addressed in the office action dated 06/20/07 and was inadvertently excluded in the office actions 12/31/07 and 6/6/08. Since claim 49 recites similar the similar limitations of claim 2 and was rejected with claim 2, it can be easily understood that claim 49 was inadvertently excluded and should have been rejected along with claim 2.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Conclusion to Examiner's Answer Raising New Grounds of Rejection

For the above reasons, it is believed that the rejections should be sustained. This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within TWO MONTHS from the date of this answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the new ground of rejection: (1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must

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be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1). Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/Daniel L. Hoang/

Examiner, Art Unit 2436

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:

/Timothy P Callahan/

Director, Technology Center 2400

Conferees:

/Kimyen Vu/

Supervisory Patent Examiner, Art Unit 2435

/Nasser G Moazzami/

Supervisory Patent Examiner, Art Unit 2436